vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5964 OF 1996

Maharashtra Technical Education
Society, Pune ... Petitioner

V/s.

Surekha J. Tambekar & Ors. ... Respondents

Mr.R.V. Govilkar for Petitioner
Mr.K.S. Bapat for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 25, 2007**

ORAL JUDGMENT:

. The petitioner has challenged the orders passed by the Labour Court in Complaint (ULP) No.83 of 1989 and by the Industrial Court in Revision Application (ULP) No.93 of 1996.

2. The respondent employee was working as a Typist cum Clerk w.e.f.1983. She was confirmed in service from 1.1.1986. A chargesheet was issued to her for certain acts of misconduct. An enquiry was conducted against her and the petitioner dismissed her on the basis of the report of the enquiry officer. Aggrieved by the petitioner's action, the respondent-workman filed complaint (ULP) NO.83 of 1989 under Items 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act. S . The Labour Court held that although the enquiry was held in a fair and proper manner, the findings of the

Enquiry Officer were perverse. Evidence was adduced before the Labour Court by the petitioner in order to prove the charges levelled against the respondent workman. The Labour Court held that the charge of misappropriation was not proved and, therefore, came to the conclusion that an unfair labour practice had been committed by the petitioner under Item 1(b) of Schedule IV of the MRTU & PULP Act. The Labour Court therefore, directed the petitioner to reinstate the respondent workman with continuity of service and full backwages.

3. Aggrieved by this order, the petitioner filed revision application (ULP) No.93 of 1996. By a judgment dated 28.8.1986, the Industrial Court dismissed the revision application. The Industrial Court held that the findings of the Labour Court, based on an appreciation of evidence, were correct and that the Labour Court had committed no error on the face of the record. The Industrial Court then considered the submissions advanced on behalf of the petitioner that it was difficult for it to comply with the order of the Labour Court. The Industrial Court considered the fact that it was not possible for the petitioner to reinstate the respondent workman and, therefore, accepted the offer made on behalf of the petitioner to accord some alternate relief to the workman. The Industrial Court has observed thus:

> "11. ... Therefore, Mr.Shaligram has concerned that instead of granting reinstatement with backwages if a compensation is award to the complainant as an alternate relief then the applicant respondent is ready to pay the amount of compensation. Mr.Gupte adv. for the complainant argued that, he has no objection for grant of compensation to the complainant, but at the same time, the complainant should be granted the backwages till the date of disposal of the present revision application and presuming that the complainant was retrenched on the date of order, the benefit of retrenchment should be granted to the complainant. Thus, when both the counsels for the applicant-respondent and for Opponent-complainant are argued for the alternative relief instead of reinstatement, I am constrained to hold that there is reason to interfere in the order passed by the Labour Court. ....."

4. It is evident from these observations that the impugned order was passed by the Industrial Court on the basis of the consent of both the parties. The Industrial Court has instead of reinstatement, granted only backwages. It set aside the order of the Labour Court directing reinstatement. However, in lieu of reinstatement, the Industrial Court has directed that retrenchment compensation and gratuity should be paid to the respondent workman, presuming that she had been retrenched w.e.f. 1.9.1996.

5. In my view, it is now not open for the petitioner to challenge this order when it had agreed before the Industrial Court that instead of reinstatement with backwages, compensation should be

awarded. If the Industrial Court has accepted this submission on behalf of the petitioner and has directed payment of backwages and retrenchment compensation and gratuity, in my view, there is no error committed by the Industrial Court which requires interference from this Court.

6. In the circumstances, the Petition is dismissed. When the petition was admitted, the petitioner was directed to deposit an amount of Rs.25,000/- in the trial Court. The respondent workman was given liberty to withdraw the same on furnishing security to the satisfaction of the trial Court. In the event this amount has been deposited, the petitioner will pay the amount as awarded by the Industrial Court, less the amount of Rs.25,000/- to the Respondent workman. The amount of Rs.25,000/- shall be paid over to the respondent workman by the trial Court if not already paid. In the event the amount of Rs.25,000/- has not been deposited, the petitioner shall pay the entire amount as awarded by the Industrial Court to the respondent workman within eight weeks from today. In the event the respondent workman has withdrawn the amount of Rs.25,000/- by furnishing security to the satisfaction of the trial Court, that security shall be discharged.

7. With these directions, the Writ petition stands dismissed. Rule discharged. No costs.